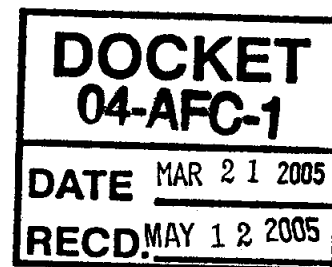


CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512
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March 21, 2005



Mr. Poli A. Marmolejos, Director
Office of Civil Rights and Diversity
Department of Energy
Washington, D.C. 2005

Re: Californians for Renewable Energy, et al v. California Independent System Operator (DOE Complaint Nos. 03-001-HQ; 03-002-HQ; 03-003-HQ)

Dear Mr. Marmolejos:

On January 7, 2005, your office issued a Letter of Finding ("LOF") concluding that it had no jurisdiction with regard to the above-referenced complaints. The LOF states that it is "final and not subject to appeal." On March 10, 2005, my agency received your subsequent correspondence with Mr. Michael Boyd ("Californians for Renewable Energy" or "CARE") stating that your office will further analyze CARE's allegations raised in the complaints that were the subject of the LOF. Such further analysis is with regard to the California Energy Commission ("Commission"), the City and County of San Francisco, and Pacific Gas and Electric, based on "the issues" raised by such correspondence.

The allegations with regard to the Commission are no more than what CARE stated in its complaint:

To the degree that the California Energy Commission (CEC), and/or the City and County of San Francisco (CCSF), are or have acted in concert with the Cal ISO in the siting of new generation they are also Parties to this complaint.

This vague and unspecific allegation does not meet even the most minimal threshold for stating a comprehensible claim. No specific action is claimed or identified, so it is impossible to know the nature of the alleged act, whether it occurred at all, or whether it occurred within 180 days of CARE's June 21, 2003, complaint. Any minimal notion of procedural due process would require that such a claim be dismissed or disregarded for failure to specify the allegedly actionable conduct.

The Commission is the state agency responsible for licensing power plants. (Pub. Resources Code, § 25500.) Utilities and other entities initiate the licensing process by filing applications for a license (called in statute a "certificate"). The Commission has no control with regard to where applicants wish to build new facilities. The Commission's role is to determine if proposals to build power plants and associated transmission facilities comply with all applicable laws, ordinances, regulations, and standards, and to perform environmental analysis pursuant to the California Environmental

Quality Act. The California Independent System Operator ("ISO") is charged with assuring the reliability of the electricity "grid," including the reliability impacts on the grid of new facilities. The ISO and the electric utilities are the entities with the greatest expertise with regard to this issue, and the Commission solicits this expertise, consistent with statutory requirements.

CARE provides no facts to support its nebulous conditional assertion. In its undated letter challenging the LOF, CARE states that "[t]he City of San Francisco (CCSF) and the California Energy Commission (CEC) have sought to site three of the four Combustion Turbines that CCSF received from the State of California as part of the settlement between the State and Williams Energy." (CARE's undated letter, p. 5.) Whatever its relevance, this reckless claim is simply incorrect. The Commission does not—cannot—advocate for the licensing of a particular project. As stated above, it is by statute the licensing agency, and its role is to conduct the environmental review and legal consistency review of a power plant proposal to determine whether a power plant license should be granted.

The Commission currently has before it an application from the City of San Francisco for a project in southeast San Francisco. CARE's undated letter further asserts, with no reference or citation, that the Commission has "precommitted for this project's approval by deciding not to terminate [City of San Francisco's] siting proceeding when [San Francisco] filed notice that it no longer had a project site for the three CTs." (CARE's undated letter, p.6.) Again, CARE's statements disregard the actual facts. The City of San Francisco has changed the site location of its proposed project, requiring the preparation of further environmental analysis that has delayed the siting proceeding. CARE sought to terminate the proceeding on the asserted ground of "the applicant's failure to pursue an application," pursuant to Commission regulations. (Cal.Code Regs., tit. 20, § 1720.2.) Termination of applications by the Commission is entirely discretionary (*ibid.*), and the agency did not terminate the City of San Francisco's application because the City was diligently preparing environmental analysis for a new site location. Plainly, the decision of any tribunal not to grant a motion to dismiss is in no way the equivalent of a decision on the merits in favor of the party whose proceeding continues before the tribunal.

Under even the most liberally conceived rules of pleading, CARE's complaint would be dismissed for failure to state an actionable cause. Such basic pleading criteria ("what" and "when") are essential to avoid the waste of your Office's resources, as well as the resources of those subject to careless, off-handed, and baseless accusations. CARE has never set forth any actionable or credible claim to the Office of Civil Rights with regard to the Commission. Accordingly, we ask that you dismiss the complaints in their entirety, consistent with your January 7, 2005, LOF.

Yours truly,



RICHARD C. RATLIFF
Staff Counsel IV

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached letter regarding: **Californians for Renewable Energy, et al v. California Independent System Operator (DOE Complaint Nos. 03-001-HQ; 03-002-HQ; 03-003-HG)** on all parties of record in the above-captioned proceedings by placing them in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

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I declare that under penalty of perjury that the foregoing is true and correct.


Paulette Burpo


Dated